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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

13 ERIC HACKETT, ) 1:01-CV-5997 REC SMS HC  
14 Petitioner, ) ORDER DENYING PETITIONER'S  
15 v. ) MOTION FOR NEW TRIAL  
16 DON TAYLOR, et al., ) [Doc. #95]  
17 Respondents. )  
18

19 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus on  
20 appeal to the Ninth Circuit Court of Appeal pursuant to 28 U.S.C. § 2254.

21 On August 5, 2005, this Court denied the petition with prejudice, and judgment was entered  
22 for Respondent.

23 On August 22, 2005, Petitioner filed a notice of appeal. On October 6, 2005, Petitioner filed  
24 the instant motion for relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil  
25 Procedure. Petitioner is advised that the notice of appeal effectively deprived this Court of  
26 jurisdiction to rule on his motion for relief. Generally, the filing of a notice of appeal divests the  
27 district court of jurisdiction with respect to all matters involved in the appeal. Griggs v. Provident  
28 Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam); Bermudez v. Duenas, 936 F.2d 1064,

1 1068 (9th Cir.1991); Gould v. Mutual Life Insurance Company of New York, 790 F.2d 769, 772 (9th  
2 Cir.1986); Scott v. Younger, 739 F.2d 1464, 1466 (9th Cir.1984); Davis v. United States, 667 F.2d  
3 822, 824 (9th Cir.1982). A district court does have discretion to entertain a motion for  
4 reconsideration even though an appeal has been taken, but only after an appellate mandate has  
5 issued. Gould, 790 F.2d at 773 (“Once an appellate mandate has issued, leave of . . . [the Court of  
6 Appeal] is not required for district court consideration of Rule 60(b) motion”). Because the appeal is  
7 pending, this Court is without jurisdiction to rule on Petitioner’s motion.

8 Accordingly, the motion for relief from judgment is DISMISSED.

9 IT IS SO ORDERED.

10 Dated: October 21, 2005  
11 668554

/s/ Robert E. Coyle  
12 UNITED STATES DISTRICT JUDGE

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